IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

COMMON ORDER

SB CIVIL WRIT PETITION NO.3345/1995
Karnail Singh & Ors.
V/s
The Board of Revenue & anr.

SB CIVIL WRIT PETITION NO.3344/1995
Ranjeet Singh & Ors.
V/s
The Board of Revenue & anr.

SB CIVIL WRIT PETITION NO.3343/1995
Jasbeer Singh & Ors.
V/s
The Board of Revenue & anr.

Date of order :: :: 12th January, 2007

PRESENT

HON'BLE MR. JUSTICE P.S. ASOPA

Mr.R.K. Goyal, for the petitioners.
Mr.B.L. Avasthi, Addl. GA, for the State.

Since the common set of facts and question of law relating to authority of the State Government to withdraw the notice issued under Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter to be referred as “the Act of 1973”) are involved in all these three writ petitions, therefore, all the three petitions are heard together and further are being decided together.

2. By the aforesaid writ petitions, the petitioners have mainly challenged the judgment of Larger Bench of

Board of Revenue dated 19.6.1995 whereby it has been held that the State Government cannot stay/review/withdraw or rescind an order passed by it under Section 15 (2) of the Act of 1973, after the same has been complied with by the Additional Collector. The other ancillary / consequential prayers have also been made.

3. Briefly stated the relevant facts of the case are that the present petitioners are ultimate transferee of the land initially held by Narendra Singh, against whom the ceiling proceedings were initiated and the same were dropped on 19.4.1971. No appeal was filed by the State Government against the order dated 19.4.1971, but a notice / order under Section 15 (2) of the Act of 1973 was issued to Narendra Singh on 29.1.1980 for re-opening of the proceedings. The Additional Collector, Sriganganagar in pursuance of the order of the State Government dated 29.1.1980 passed an order on 25.1.1982 for declaring 623 Bigha 8 Biswa land surplus with a further direction to take the possession of the same. Against the said order dated 25.1.1982, the petitioners filed appeals under Section 23(2A) of the Act of 1973 before the Board of Revenue. In few cases, during the pendency of the proceedings before the Board of Revenue, the State Government by a detailed order of the Revenue Minister dated 29.6.1988 withdrew the notice/order dated

29.1.1980 on the ground that the same was issued without service of notice on the assessee Narendra Singh and the Hon'ble Minister vide its order dated 5.5.1991 held that Shri Narendra Singh did not hold any land in excess of the limit and the notice was dropped. In pursuance of the order of the Minister dated 5.5.1991, the State Government issued an order on 18.5.1991 that re-opening orders dated 29.1.1980 and 14.4.1980 are set aside. This order was addressed to the Registrar, Board of Revenue where appeals / review petitions were pending. Learned Single Member, who was seized with the appeal / review referred the matter to the larger bench of the Board of Revenue on the following point:-

> "Whether the State Government can stay / review / withdraw or rescind an order passed by it under Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 after the same has been complied with by the Additional Collector?"

4. Before the larger Bench of the Board of Revenue, the Government Advocate took the preliminary objection that the larger bench has no jurisdiction to hear this case and the single member has no jurisdiction to refer the matter to the larger bench. The larger bench of the Board of Revenue over-ruled the said objection of the State Government and decided the case and vide its order dated 19.6.1995 held that the State

Government has no power to withdraw its re-opening order under the Act of 1973. Against the said order, the present writ petitions have been filed.

5. The State Government has filed reply to the writ petition and admitted therein to the extent that cases of the petitioner were re-opened according to the order of the State Government under Section 15 (2) of the Act of 1973 and the same were sent to the Additional Collector, Sriganganagar for re-deciding. The State Government has not filed any writ petition against the judgment of the Board of Revenue dated 19.6.1995, which shows that the State has accepted the answer of the reference made by the Board of Revenue.

6. The counsel for the petitioners raised an objection that Government is estopped from challenging the order of withdrawal of reopening notice / order. The submission of counsel for the petitioners is that the Board of Revenue has no jurisdiction to adjudicate upon the proceedings under Section 15 (2) of the Act of 1973 either before notice or after order or after withdrawal of order of reopening, for the reason that as per Section 23 of the Rajasthan General Clauses Act, 1955 (hereinafter to be referred as “the Act of 1955”) the authority which issued the notice / notification / order can always stay, amend, vary or rescind such notice / notification / order, therefore, the Board of Revenue ought not to have heard the

matter arising out of the re-opening of the proceedings in respect of which the order of re-opening has been withdrawn. Further submission of counsel for the petitioner is that finding of the larger bench of the Board of Revenue that the State Government, which has issued the notice / order under Section 15(2) of the Act of 1973, has no authority to withdraw the same, is contrary to Section 23 of the Act of 1955, therefore, the Authorised Officer or any other court is bound by the same and withdrawal of re-opening notice / order of the ceiling proceedings is legal.

7. Counsel for the respondent State has initially not challenged the power of the State Government to withdraw the order of reopening before Board of Revenue and has simply submitted before this Court that the order of Authorised Officer has been acted upon and further the State has also not assailed the answer of the reference given by the Board of Revenue from which it appears that the Government has accepted the legal interpretation of power of withdrawal of reopening given by the Board of Revenue.

8. I have gone through the record of the writ petitions and further considered rival submissions of the parties.

9. I would like to deal first with the objection of the petitioners that the State is estopped from

challenging the order of withdrawal of reopening on account of their contention/conduct before the Board of Revenue. It is true that a party as a defendant cannot be allowed to attack their own order at the initial stage, but subsequently when a judgment is delivered by the competent court, they are free to accept or not to accept either by not filing the writ petition or assailing the same by filing independent writ petition. In this case the Government has submitted in para 10 of reply that after redeciding the case by Additional Collector, Sriganganagar, the assessee Narendra Singh was found entitled for 46.08 Bigha of land, the surplus land was acquired by the Government and has not assailed the order of reference of Board of Revenue dated 19.6.1995. In the prayer clause, the Government has prayed for dismissal of the writ petition, which categorically reveals that the Government has accepted the legality of aforesaid order of Board of Revenue. The said order of Board of Revenue has been assailed by the petitioners and the validity of which would be decided by this Court.

10. Before proceeding to give the finding on the issue raised in the present writ petitions, it would be useful to quote certain provisions of law. Section 15 (1), 15 (2) & 23 (2A) of the Act of 1973 and Section 23 of the Act of 1955 are reproduced hereunder:-

The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973.

15. Power to re-open cases – (1) Notwithstanding anything contained in this Act, if the State Government, after calling for the record or otherwise is satisfied that any final order passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with the provisions of this Act:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in foregoing proviso shall be issued after the expiry of five years from the date of the final order sought to be re-opened or after the expiry of the 30th day of June, 1979, whichever is later.

(2) **Without prejudice to any other remedy that may be available to it under Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter and to decide it afresh in**

accordance with such repealed provisions:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned.

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of seven years from the date of the final order sought to be re-opened or after the expiry of 30th day of June, 1979, whichever is later:

Provided that no final order passed by the Board in the matter referred to in sub-section (1) or in sub-section (2) shall be directed to be re-opened and decided afresh under the said sub-sections unless the State Government is satisfied that such order is required to be reopened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of the record.

23. Appeals. -

(2A) The State Government or any person aggrieved by the decision under section 15 of the officer referred to in that section may, within sixty days from the date of decision, appeal to the Board against such decision and the provisions contained in sub-section (3) to (6) shall mutatis mutandis apply to such appeal.

<u>The Rajasthan General Clauses Act, 1955</u>

23. Power to make or issue to include power to add, to amend, vary or rescind orders,etc. - Where, by any Rajasthan law, a power to make or issue orders, rules, regulations, schemes, forms, bye-laws or notifications is conferred, then that power includes a power exercisable in the like manner and subject o the like sanction and conditions (if any), to add, to amend, vary or rescind any orders, rules, regulations, schemes, forms, bye-laws or notifications so made or issued.

(emphasis supplied)

11. Section 23 of the Rajasthan General Clauses Act, 1955 is pari materia with Section 21 of General Clauses Act, 1897.

12. First submission of counsel for the petitioners is that Board has no authority to adjudicate upon withdrawal of notice / order of reopening. As per scheme of the Act of 1973, the State Government has only been given the authority under Section 15 (2) to re-open the case after notice to the assessee / LRs of the assessee on being satisfied that any final order passed in any matter arising under the provisions repealed by Section 40 is in contravention of such repealed provisions and that such order is prejudicial to the State Government or on account of discovery of new and important material of evidence, which has since come to its notice. Such matter if required to be re-opened, it may direct any officer subordinate to it to re-open such matter and to decide it afresh in accordance with such repealed provisions. The ceiling legislation is a beneficial legislation for the public at large having no piece of land in the State of Rajasthan, although they are by profession agriculturists or intend to adopt such profession. As per the scheme of the Act of 1973, neither any appeal nor revision has been provided against the order of re-opening passed by the State Government or its Deputy Secretary and even validity of the notice also

cannot be examined by the authorised officer or by the Board but here in the instant case, the question before the Board of Revenue was whether the proceeding before the authorised officer which culminated in final order and against which appeal has been filed before the Board of Revenue or decided in which review has been filed, can be terminated by the State Government by withdrawal of the notice. In the Scheme of the Act, there is no provision of further review after re-opening and the only remedy which was available to the petitioner at the relevant time was to file writ petition before the High Court against the order of re-opening. The issue before the Board of Revenue was whether the ceiling proceedings could have been terminated by an order of the State Government, after passing of final order by the Authorised Officer / Board, therefore, Single Member of the Board who was sitting as an Appellate/Reviewing Authority, had rightly referred the issue to the Larger Bench on the aforesaid question of law. Thus, the aforesaid submission is wholly misconceived.

13. Second submission of counsel for the petitioners is that under Section 23 of the Rajasthan General Clauses Act, 1955, the Government being the authority of issuing the notice/order, is competent to withdraw the same. The said provisions of General Clauses Act are not applicable in cases of judicial and quasi judicial authority where only the statutory provision of review is applicable. The Government while issuing the notice / order of reopening is exercising the power of

review in the interest of State, as indicated above. As per the scheme of the Act, no further power of review is available and that too in the case in which final order has been passed by the Authorised Officer.

14. Counsel for the petitioner has relied on a judgment of this Court reported in **1993 (1) RLR 697 – Rup Ram & Ors. V/s State of Rajasthan & ors.** wherein in para 11, 13 & 16, it has been held that in view of Section 23 of the Rajasthan General Clauses Act,1955, the State Government, which has issued the notification for allotment, can always stay, amend, vary or rescind such order / notification. Para 11, & 13 of the said judgment are as follows:-

> "11. The writ petitions mentioned in Schedule B are those cases in which the money was not deposited because of the ban imposed by the Government. In these cases no enquiry was undertaken as required by Sub-rule (4) of Rule 13-A and no direction was given for depositing 35% of the amount in question.
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> **13. I have gone through the provisions of the Colonisation Act and Rules and there is no specific provision conferring power on the State Government to pass an order of such nature staying the allotments. But nonetheless under Rule 13-A it is the State Government which has to notify in the Official Gazette the sale of certain Government land by way of special allotment. The notification has to be issued by the State Government that certain Government land is sold by way of special allotment. It is the State Government which decides that which Government land has to be sold by special allotment. The same authority can**

> **revoke or withdraw the order. Section 23 of the Rajasthan General Clauses Act, 1955 confers a power on the authority who has issued the order to revoke, amend, vary or rescind any stay the order. Therefore, it is the State Government which issued the notification for allotment can always stay, amend, add, vary or rescind such order / notification. Therefore, to say that the State Government has no power to stay the allotment is not correct. By virtue of Section 23 of the Rajasthan General Clauses Act, 1955 the authority which issued the order can amend, add, vary or rescind the order. Therefore, the State Government was competent to issue stay order and revoke the order."**
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> (emphasis supplied)

15. The Madras High Court in case of ***Municipal Council, Bezwada V/s Madras and Southern Maharattah Railway Co. Ltd. - AIR (31) 1944 Madras 355*** while dealing with an order passed under Section 135 (2) of Railways Act and phrase "from time to time determine" in Section 21 of General Clauses Act, categorically held that provisions of these Acts do not apply to a decision as to the rights of the parties made by a particular quasi judicial, judicial or administrative authority. The relevant extract of page 358 of the said judgment is as follows:-

> "In India prior to the enactment of 1897 a doubt was felt whether the power to make orders and rules included a power to vary or rescind those orders or rules. Section 20 to 24, General Clauses Act, relate to powers conferred upon, what we may call, a subordinate legislative authority. In several cases the Legislature instead of making orders and rules and notifications in the Act itself, enacts that a particular

> authority shall have, subject to the conditions mentioned in the enactment, the power to issue or make notifications, orders, or rules. In such cases the authority to which the power to issue or make orders or notifications is given is to have the power to modify, vary or rescind them. Some cases of delegated authority to issue orders and rules are set out in "Local rules and orders in the Madras Presidency," published from time to time. It does not apply to a decision as to the rights of parties made by the particular judicial or quasi judicial or administrative authority. If S. 21 is held to apply to all cases where an order is passed under an enactment, the result would be startling. A District Munsif is authorized to pass several orders by the Code of Civil Procedure and if the interpretation urged by the appellant is accepted, then the same Court or officer can vary or rescind them. This certainly is not the law. It has been ruled by the Judicial Committee that except as provided by the statute there is no power in a Court to modify or vary a judgment once passed by it. We therefore hold that the Collector of Kistna district had no power to modify or alter an order once passed by him under S.135 (2) of the Act. The order passed under Ex. N must therefore be held to be ultra vires of Mr. Karamatullah."

16. The Supreme Court in case of ***The Strawboard Manufacturing Co. Ltd. V/s Gutta Mill Workers' Union – AIR 1953 SC 95*** while dealing with extension of time of award held that provisions of Section 21 are not applicable. Para 6 of the same is as under:-

> "Learned advocate for the Intervener, the State of Uttar Pradesh, draws our attention to section 21 of the U.P. General Clauses Act, 1904, and contends that the order of 26-4-1950 should be taken as an amendment or modification, within the meaning of that section, of the first order of 18.2.1950. It is true that the order of 26.4.1950 does

> `ex facie' purport to modify the order of 18.2.1950 but, in view of the absence of any distinct provision in S. 21 that the power of amendment and modification conferred on the State Government may be so exercised as to have retrospective operation the order of 26.4.1950, viewed merely as an order of amendment or modification, cannot, by virtue of S.21, have that effect. If, therefore, the amending order operates prospectively, i.e. only as from the date of the order, it cannot validate the award which had been made after the expiry of the time specified in the original order and before the date of the amending order, during which period the adjudicator was `functus officio' and had not jurisdiction to act at all. We do not think the respondents can derive any support from S.21 of the U.p. General Clauses Act."

17. Similarly, the Supreme Court in a case **State of Bihar V/s D.N. Ganguly & Ors. - AIR 1958 SC 1018** held that provisions of Section 21 of the General Clauses Act cannot be invoked and the appropriate Government could not amend the reference originally made under Section 10 as the order made by the Government would amount to cancellation or supersession, which is not permissible once the reference is made. In sum and substance, Section 10 of the ID Act will have power to add or amplify a matter already referred for adjudication, but it will not have power to supersede or cancel the old reference in such a way to effect the withdrawal of reference validly referred nor can the jurisdiction of the Labour Court be taken away by the Government by canceling or superseding the reference once made to it. The

relevant para 8, 9 & 15 of the said judgment are as follows:-

> “8. Dr. Bannerjee for the appellant has urged before us that in dealing with the question about the powers of the appropriate government under Sec. 10 (1) of the Act, it would be necessary to bear in mind the facts which led to the cancellation of the first two notifications and the issue of the third impugned notification. He contends that in issuing the third notification the appellant has acted bona fide and solely in the interests of fair-play and justice; it came to the conclusion that it was necessary that the union should be heard before the disputes in question are adjudicated upon by the Industrial Tribunal and that it would be more convenient and in the interest of industrial peace and harmony that the dispute should be referred to the tribunal in a more comprehensive and consolidated from bringing before the tribunal all the parties interested in it. In our opinion, the bona fides of the appellant on which reliance is placed by Dr.Bannerjee are really not relevant for determining the appellant's powers under S. 10(1) of the Act. If the appellant has authority to cancel the notification issued under S. 10 (1) and if the validity of the canceling notification is challenged on the ground of malafides it may be relevant and material to inquire into the motives of the appellant. But, if the appellant has no authority to cancel or revoke a notification issued under S.10 (1), the bona fides of the appellant can hardly validate the impugned cancellation. That is why, we think, the appellant cannot base its arguments on the alleged bona fides of its conduct.
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> 9. It is conceded by Dr. Banjjerjee that the Act does not expressly confer any power on the appropriate government to cancel or supersede a reference made under S.10(1) of the Act. He, however, argues that the power to cancel or supersede such a reference must be held to be implied, and in support of his argument he relies on the provisions of Sec. 21 of the General Clauses Act, 1897 (X of 1897). Section 21 provides that “where, by

any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. **In other words it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by Sec. 21, the appellant's contention is justified that the power to cancel the reference made under Sec. 10 (1) can be said to vest in the appropriate government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section. We must, therefore, proceed to examine the relevant provisions of the Act itself.**

15. Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate government should have an implied power to cancel its own order made under S.10(1). If on the representation made by the employer or his workmen the appropriate government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference under S. 10(1) there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made under S. 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies

> the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. **If the power claimed by the appellant is conceded to the appropriate government it would be open to the appropriate government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate government under S.10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of S.21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by S.21 of the General Clauses Act in so far as it refers to the power of rescinding or canceling the original order cannot be invoked in respect of the provisions of S.10(1) of the Industrial Disputes Act."**
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> (emphasis supplied)

18. The judgment of *State of Bihar V/s D.N. Ganguly* was considered by the Supreme Court in a case ***State of Madhya Pradesh V/s Ajay Singh and Ors. - (1993) 1 SCC*** 302 in a matter of replacing its existing sole member by another member under the Commission of Inquiry Act, 1952 and held that Section 21 is not applicable where much emphasis was laid on the scheme of the Act. In the instant case also, as per provisions of the Act of 1973, there is no further review of order of reopening and the only remedy available to the petitioner was to file a writ petition. Para 26 and 31 of the said judgment are as follows:-

"26. It is common ground before us that Section 21 of the General Clauses Act can be invoked only if, and to the extent, if any, the context and the scheme of the Commissions of Inquiry Act so permits. The general power in Section 21 of the General Clauses Act is to add to, amend, vary or rescind any notification etc. In the context of reconstitution of the Commission, the power to fill any vacancy in the office of a member of the Commission is expressly provided in sub-section (3) of Section 3 of the Commission of Inquiry Act. Similarly, the power to discontinue the existence of the Commission when it becomes unnecessary can be exercised by issue of a notification in accordance with Section 7 of the Act which results in rescinding the notification issued under Section 3 constituting the Commission. Thus, the power to rescind any notification conferred generally in Section 21 of the General Clauses Act is clearly inapplicable in the scheme to the Commissions of Inquiry Act which expressly provides for the exercise of this power in relation to a Commission constituted under Section of the Act. The only material remaining general powers in Section 21 of the General Clauses Act are the power to `amend ' or `vary' any notification. The extent to which the constitution of the Commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commissions of Inquiry Act is also obviously excluded from the purview of Section 21 of the General Clauses Act which cannot be invoked for this purpose."

31. On the other hand, Shri Kapil Sibal placed reliance on The State of Bihar v. D.N. Ganguly & Others, [1959] S.C.R. 1191. This decision also related to the reference of a dispute under the Industrial Disputes Act, 1947. It was pointed out that :

"it was well settled that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the G provisions of a statute only where the subject-matter, context, and effect of such provisions are in no way inconsistent with such application."

On this basis it was held that it did not apply to Section 10(1) of the Industrial Disputes Act. On a construction of Section 10

> (1) of the Industrial Disputes Act, 1947, it was held that it does not confer on the appropriate Government the power to cancel or supersede a reference made thereunder in respect of an industrial dispute pending adjudication by the tribunal constituted for that purpose. Reliance placed on Section 21 of the General Clauses Act on behalf of the Government to invoke such a power by necessary implication was clearly negatived. The decision of this Court in Minerva Mills Ltd. (supra) was distinguished as we have already indicated. In our opinion, the ratio in D.N. Ganguly (supra) supports the view taken by us in the present case that Section 21 of the General Clauses Act cannot be invoked to support the impugned action of the State of Madhya Pradesh as contended by Shri Shanti Bhushan. The construction suggested by Sri Shanti Bhushan is inconsistent with the provisions and the scheme of the Commissions of Inquiry Act, 1952 and must, therefore, be rejected."

19. In a recent judgment in case of ***Indian National Congress (1) V/s Institute of Social Welfare and others – (2002) 5 SCC 685***, the Supreme Court has extensively considered the word "order" mentioned in Section 21 of General Clauses Act, 1897 and has held that the Election Commission has no power to de-register or cancel the registration of a political party on the ground of violation of sub-section 5 of Section 29-A with the aid of Section 21 of General Clauses Act. It was also held that Section 21 does not apply where statutory authority is required to act quasi judicially. The Court has also made distinction between the Administrative Act and Quasi Judicial Act by saying that where law requires that an authority before arriving at a decision must make an

enquiry, such a requirement of law makes the authority a quasi-judicial authority. In the instant case, the Government is bound to consider record of earlier case and to hear the other party under Section 15(2) of the Act of 1973 on the issue and further make enquiry for its satisfaction that any final order passed in any matter arising under the provisions repealed by Section 40 is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of discovery and new important material or evidence which has since come to its notice, such matter is required to be reopened. The orders which are sought to be reopened under Sub-section 2 of Section 15 are quasi judicial orders passed by the revenue authorities, therefore, there cannot be any manner of doubt that the power which has been exercised by the Government under Section 15(2) of passing the order of reopening, which was subsequently withdrawn, is a quasi judicial power. The relevant paras 24, 25 and 27 are as under:-

> “24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these :
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> Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c)although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

> 25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.
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> 27. What distinguishes an administrative act from quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

20. On the issue of applicability of Section 21 of General Clauses Act, the Supreme Court in para 37, 38 & 39 has held as under:-

> “37. It was next urged by the learned counsel for the appellants that the view taken by the High Court that by virtue of application of provisions of Section 21 of the General Clauses Act, 1897 the Commission has power to de-register a political party if it is found having violated the undertaking given before the Election Commission, is erroneous. According to him, once it is held that the Commission while exercising its powers under Section 29A of the Act acts quasi-judicially and an order registering a political party is a quasi-judicial order, the provision of Section 21 of the General Clauses Act has no application. We find merit in the submission.
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> 38. We have already extensively examined the matter and found that Parliament consciously had not chosen to confer any power on the Election Commission to de-register a political party on the premise it has contravened the provisions of sub-section (5) of Section 29A. The question which arises for our consideration is whether in the absence of any express or implied power, the Election Commission is empowered to cancel the registration of a

> political party on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:
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> "21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws. Where by any central Act or regulation, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."
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> 39. On perusal of Section 21 of the General Clauses Act, we find that the expression 'order' employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the functions exercisable by the Commission under Section 29A is essentially a quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially."

21. The order mentioned in Section 21 must be in the nature of notifications/rules and bye laws made while exercising the legislative or executive power, but not quasi judicial power.

22. The judgments cited by counsel for the petitioners was of allotment and notification was issued while exercising administrative power where the

Government was not to decide rights of any parties and not to discharge the judicial or quasi judicial function. But in the instant case, the Government was having limited power of review to reopen the ceiling case, in case, the same is prejudicial to the interest of the State Government or contrary to the concerned provisions of law by issuing a notice and authorising an officer subordinate to it to decide it afresh, according to law, therefore, rights of the parties have been determined only to extent of reopening by the Government on the aforesaid ground and full opportunity on merit will be available to the party before the Authorised Officer and then in appeal before the Board of Revenue. In case, such a power is conceded to the Government then it will be open to the Government to cancel or supersede the reopening order and terminate the quasi judicial proceeding pending before the Authorised Officer / Board of Revenue. Therefore, withdrawal of the notice/order by the State Government that too after final decision by the Authorised Officer is, wholly without jurisdiction.

23. In view of above, Larger Bench of Board of Revenue has rightly decided the reference in the following terms:-

> “That the State Government can not stay/review/withdraw/amend or rescind an order passed by it under section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act of 1973, after the

same has been complied with by the Additional Collector.”

15. Accordingly, common judgment of the Larger Bench of the Board of Revenue dated 19.6.1995 is upheld. The writ petitions fail and the same are dismissed.

(P.S. ASOPA) J.

ummed/-